Petition

81-858

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

CHARLES RONNIE WATSON, PETITIONER,

versus

THE STATE OF SOUTH CAROLINA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF SOUTH CAROLINA
CRIMINAL CASE

COSTA M. PLEICONES,
Counsel of Record for Petitioner,
1400 Laurel Street,
Post Office Box 11408,
Columbia, South Carolina 29211,
Telephone No. (803) 252-3900,

JAMES C. HARRISON, JR.,
1400 Laurel Street,
Columbia, South Carolina 29201,
Telephone No. (803) 252-3900,

Attorneys for Petitioner.

QUESTION PRESENTED

Whether a warrantless search of a locked briefcase found in the locked trunk of an unabandoned automobile, and the seizure of its contents, which were later admitted into evidence against Petitioner in his state court trial, exceeds the constitutionally permissible scope of an inventory search of the vehicle, performed in consequence of the lawful operator's arrest and detention for driving under the influence of alcohol.

PARTIES TO THE PROCEEDINGS IN THE SUPREME COURT OF SOUTH CAROLINA

The only parties to the proceedings in this case in the Supreme Court of South Carolina are those listed in the caption for this Petition.

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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

CHARLES RONNIE WATSON, PETITIONER,

versus

THE STATE OF SOUTH CAROLINA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF SOUTH CAROLINA
CRIMINAL CASE

The Petitioner respectfully prays that a Writ of Certiorari issue to review the decision and judgment of the Supreme Court of South Carolina, entered in this proceeding.

OPINIONS AND ORDERS BELOW

The Court of General Sessions for Newberry County, South Carolina filed no opinion. The Memorandum Opinion of the Supreme Court of

South Carolina (Appendix "A") is not reported.

The Order of the Supreme Court of South Carolina denying the Petition for Rehearing therein is printed in Appendix "B".

JURISDICTION

The judgment of the Supreme Court of South Carolina was dated and filed on August 19, 1981. Petition for Rehearing (Appendix "C") was denied on September 16, 1981, (Appendix "B"). The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Section 1257(3) and Rule 17.1.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall

issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV, Section 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, a resident of North Carolina, was indicted by the Grand Jury in the Court of General Sessions of Newberry County, South Carolina, charged on two counts: (1) Possession of, with intent to distribute, Methamphetamine; and, (2) the lesser included offense of Possession of Methamphetamine.

The following are the facts pertinent to this Petition: On September 24, 1980, the Petitioner was arrested by PFC M.D. Mills of the South Carolina Highway Patrol, for driving under the influence of intoxicating liquors [TR, Page 5, Lines 19-24]*. It was determined by PFC Mills that the vehicle driven by Petitioner was owned by Petitioner's father-in-law,

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*TR refers to Transcript of Record in the Court below. The text of the references appear at Appendix "D" when not set out in the body of the Statement.

was not stolen, and should be towed from the interstate highway where the arrest occurred, to the Law Enforcement Complex in Newberry, South Carolina.

At trial Mills stated that an inventory was performed of each vehicle that came into the complex, which was surrounded by a high fenced area, [TR, Page 15, Lines 8-11] when the driver thereof was incarcerated [TR, Page 11, Lines 24-25].

Even though Mills testifed that the inventory was routinely performed by his agency, his agency has no inventory forms, and he had to secure same from the City Police [TR, Page 12, Lines 1-4].

At the complex, Mills enlisted the aid of a Sergeant Johnson of the Newberry City Police in conducting his inventory search [TR, Page 14, Lines 16-17], prior to which Petitioner allegedly had said that he had "...valuables..." in

the car and trunk and wanted "...it checked and locked." [TR, Page 12, Lines 12-16]. This was the total scope of any such request purportedly made by Petitioner, and was allegedly made after Petitioner had been informed of the impoundment. Petitioner for his part, denied ever having requested a check of the vehicle [TR, Page 77, Lines 12-14].

An extensive search was conducted, with Mills searching the interior of the vehicle, and Johnson the trunk [TR, Page 16, Lines 17-20] with neither officer observing what the other was doing [TR, Page 34, Lines 20-23].

Johnson discovered a locked briefcase in the locked trunk of the vehicle in addition to a lengthy list of valuables found by both officers in the vehicle.

Prior to the taking of testimony in the presence of the jury, Petitioner timely moved

to suppress the quantity of methamphetamine found in the briefcase, which formed the basis for the charges against the Petitioner [TR, Page 4, Lines 13-18].

During the course of the suppression hearing, Mills testified as follows:

[TR, Page 25, Line 24 - Page 26, Line 22]

"MR. PLEICONES: OK, sir. Let me ask you about this, this valise or case, or whatever it is. Can you describe it for the purposes of the record?

PFC MILLS: It's a normal size attache' case.

MR. PLEICONES: And anything remarkable about it to your eye?

PFC MILLS: No, sir.

MR. PLEICONES: OK. Does it look like a lot of other attache' cases?

PFC MILLS: That's correct.

MR. PLEICONES: An ordinary looking attache' case?

PFC MILLS: It's new, appears to be new. It doesn't appear to have been used that much.

MR. PLEICONES: All right, sir. I notice that -- what was -- you responded, I believe, when the Solicitor asked you if this was the case you saw that evening that it appeared to be, is that correct?

PFC MILLS: That's correct, sir.

MR. PLEICONES: What did you have to do in order to determin (sic) that it was the case?

PFC MILLS: It was locked and I needed to check the combination of the lock, and also at the time my initials were put inside the briefcase.

MR. PLEICONES: So in order to ascertain whether, in fact, this was the case that you saw at the Law Enforcement Complex on that

evening, you had to open this case up and look at your initials?

PFC MILLS: And plus the lock part of the case iteself, yes, sir."

Thereafter in the same hearing, Johnson testified as follows:

[TR, Page 51, Line 19 - Page 52, Line 7]

"MR. PLEICONES: All right sir. Can you swear with certainty it's the briefcase that you took from the vehicle that day?

SERGEANT JOHNSON: With you holding it there, no, sir.

MR. PLEICONES: OK, sir. And from any other manner can you determine whether or not it's the briefcase?

(Mr. Pleicones handed the briefcase to the witness and the witness opened the briefcase and examined it).

SERGEANT JOHNSON: Yes, sir.

MR. PLEICONES: All right, sir. And how can you tell that this is the briefcase?

SERGEANT JOHNSON: Due to the evidence markings inside.

MR. PLEICONES: OK, sir. You had to open it in order to determine whether or not it was the same briefcase?

SERGEANT JOHNSON: Yes, sir."

Johnson, then testifying concerning the Petitioner's sobriety at the time of the search, stated the following:

[TR, Page 52, Lines 17-19]

"MR. PLEICONES: OK, sir. If you do, do you recall having told me that in your opinion the Defendant [Petitioner] was intoxicated?

SERGEANT JOHNSON: Yes, sir."

After finding the briefcase, Johnson presented it to the Petitioner whom he knew to be intoxicated, who thereupon, according to John-

son, stated that he did not own the case and did not know what was inside [TR, Page 59, Lines 18-20]. The Petitioner, who was generally aware of the illicit contents of the case [TR, Page 81, Lines 22 - Page 82, Line 21], and who intended for the contents to remain private [TR, Page 82, Lines 8-12], testified that his only response was "I'm not sure" when asked if the unremarkable case was his [TR, Page 79, Lines 1-5]. Johnson testified that, upon the confrontation with the briefcase he subjectively concluded that if the briefcase did not belong to the Petitioner, the Petitioner could not grant permission to open the briefcase. Johnson felt that if the briefcase did belong to Petitioner that he (Johnson) had just been granted permission to open it [TR, Page 56, Lines 5-6].

Following this exchange, Johnson opened the briefcase and discovered a brown paper bag

which contained a plastic bag containing a pound of the substance which formed the basis for the charges [TR, Page 49, Lines 10-17].

A warrant for the Petitioner's arrest was obtained which states that the basis for the charge was the "inventory search" of the vehicle. The warrant makes no mention of consent or any other basis for the search or arrest. Indeed, the issuing magistrate testified that the charge was made solely upon the basis of the inventory search [TR, Page 68, Line 10 - Page 69, Line 16], the information for which was supplied to the affiant, one John Campbell, a police officer, in part by Mills [TR, Page 29, Lines 6-17].

It should be noted that Johnson's testimony was to the effect that he would have gone into the trunk of the vehicle whatever the circumstances, and moreover, that he would

likely have opened the briefcase in all events had it been unlocked, [TR, Page 53, Lines 15-20]:

"MR. PLEICONES: So the --what-- absent any knowledge on your part of whatever the Defendant [Petitioner] may have said, what would have been the scope of your inventory?

SERGEANT JOHNSON: The same as we did.

MR. PLEICONES: You would have gone into the locked trunk?

SERGEANT JOHNSON: Yes, sir."

[TR, Page 54, Lines 17-22]

"MR. PLEICONES: But you were going to open the case anyway, sir? I believe you just said...

SERGEANT JOHNSON: No, sir.

MR. PLEICONES: You said if it was unlocked...

SERGEANT JOHNSON: I said if it was unlocked, it would have been opened probably,

yes, sir."

Finding that the case was not abandoned, [TR, Page 110, Lines 12-13], but that Petitioner had suggested protection of valuables and disclaimed "...positive..." ownership, [TR, Page 110, Line 22 - TR, Page 111, Line 2] the trial judge denied the motion to suppress, [TR, Page 111, Line 21]. Prior thereto, however, he indicated his uncertainty as to the correctness of his decision:

[TR, Page 111, Lines 9-13]

"THE COURT: I have to conclude that under these unusual facts it is not the kind of decision that the Court sits down with and says, "I'm sure I'll never get reversed." It's close and I'm sure that it will be reviewed very thoroughly. It should be. I would invite review."

There was, significantly, no finding that Petitioner had consented to the search of the

briefcase.

Upon a finding of guilty by the jury following the admission into evidence of the methamphetamine, the Petitioner was sentenced to a term of incarceration. Petitioner, who previously moved for directed verdicts [TR, Page 139, Lines 21-22 - Page 140, Line 6 - Page 140, Lines 8-9, 24 - Page 143, Lines 16-18] at the appropriate stages of trial, then moved for, and was denied judgment non obstante veredicto [TR, Page 156, Line 24 - TR, Page 157, Line 9].

Appeal from the conviction and sentence was duly taken to the Supreme Court of South Carolina in which the Constitutional issue of a Fourth Amendment violation, was raised upon a case and exceptions which included the following:

[TR, Page 161, (Exception 1)]

"1. The trial judge committed prejudicial error in refusing to grant Appellant's motion to suppress the quanitity of methamphetamine. Said evidence was inadmissible because it was obtained through an unlawful warrantless search and seizure of places and articles in which Appellant had a legitimate expectation of privacy. This is in violation of Appellant's rights under the Fourth Amendment to the United States Constitution as made applicable to the States, and under Article 1, §10, of the South Carolina Constitution."

Upon appeal, the Supreme Court of South Carolina, affirmed, (Appendix "A"), without comment, upon all issues raised, constitutional or otherwise, the conviction and sentence.

Petition for rehearing (Appendix "C") was filed on August 27, 1981, and denied on September 16, 1981, (Appendix "B").

REASONS FOR GRANTING WRIT

I

THE SUPREME COURT OF SOUTH CAROLINA HAS DECIDED A FEDERAL QUESTION IN A WAY IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT [Rule 17.1(c)].

Petitioner respectfully submits that in affirming his conviction without comment, the Supreme Court of South Carolina has, in effect, decided a question involving his Fourth Amendment rights as made applicable to the states through the Fourteenth Amendment, Mapp v. Ohio, 367 US 643 (1961), in a manner which conflicts with decisions of this Court.

This case is both an inventory case generally governed by principles enunciated in South Dakota v. Opperman, 428 US 364 (1976) and, at the same time, a container case as treated in succession of decisions beginning

with United States v. Chadwick, 433 US 1 (1977), extending through Arkansas v. Sanders, 442 US 753 (1979), and culminating with Robbins v. California 453 US ____ (1981).

The common thread running through the Sanders, Chadwick and Robbins is that:

> "...a closed piece of luggage found in a lawfully searched car is constitutionally protected to the same extent as are closed pieces of luggage found anywhere else." Robbins v. California, supra, at 69 L.Ed 2d 747.

Petitioner is mindful that this Court has recently granted review in the case of United States v. Ross, ____ Fed 2d _____ (1980) (United States Supreme Court Docket No. 2209, Order List, October 13, 1981), and has ordered the parties to address the question of whether the Court should reconsider Robbins.

Petitioner submits that the instant case

differs in that the container herein is an ordinary piece of luggage and not a suspect container as in Robbins.

Petitioner submits that the decisions cited do not allow the police to intrude into a locked briefcase found inside a locked trunk during an inventory absent some exigency or special circumstances not present here. The underlying constitutional consideration is the legitimate expectation of privacy which one has in his effects. Katz v. United States, 389 US 347 (1968); Simmons v. United States, 390 US 377 (1968); and Rakas v. Illinois, 439 US 12, 8 reh den. 439 US 1122 (1978).

There has been no abandonment as specifically found by the trial judge, or consent, as may be inferred from the lack of a finding thereon. In short there is no articulable exigency under which the police could justify a deviation from the general rule.

In this case, the police officer who presented the case to the intoxicated Petitioner was in exclusive possession of the article as well as of the facts surrounding its seizure. That is, Johnson alone knew that he had obtained the briefcase from the trunk of the car of which Appellant was lawfully in possession, but he never conveyed that fact to Appellant. Instead, he presented this unremarkable briefcase, that neither he nor Mills could identify externally, to an intoxicated man, who equivocated or merely denied ownership. In United States v. Salvucci, 448, US 83 (1980) the Court stated, at page

> "[T]his Court has repeatedly repudiated the notion that 'arcane distinctions developed in property and tort law' ought to control our Fourth Amendment inquiry. Rakas v. Illinois, 439 US at 143, 58 L.Ed. 2d 387, 995. ct. 421."

Denial of ownership in no way equates with denial of a legitimate expectation of privacy.

Here, particularly in view of Petitioner's lawful possession of the vehicle and case, his knowledge of the probable illicit nature of his cargo, as well as police allegation that he suggested protection thereof, the legitimate expectation of privacy attaches to his possession.

In all events, assertions made by Petitioner as to ownership or knowledge, suggestion of valuables, disclaimer or the like, are irrelevant in light of the avowed intent of the officer to go into the locked trunk even in the absence of such assertions. This is a crucial determinant in this case, along with Johnson's expressed intent to probably open the briefcase anyway if it was unlocked. The cited container cases do not turn as whether a closed container is locked or unlocked.

The inventory here went far beyond the scope of a proper inventory as delineated in

South Dakota v. Opperman, supra.

In Opperman, the trunk of the vehicle was not searched because it was, as here, locked. South Dakota v. Opperman, supra, page 380, N.6.

Opperman involved only an intrusion into an unlocked glove compartment, and to expand its reach to allow the intrusion into the trunk, and hence the briefcase, is to grant the "...general license..." denied by Opperman, 428 US 390. Opperman did not address the container or luggage question present in this case and should be limited to its facts in that respect.

II

THE SUPREME COURT OF SOUTH CAROLINA HAS DECIDED A FEDERAL QUESTION IN WAY WHICH CONFLICTS WITH THE DECISIONS OF OTHER STATE COURTS OF LAST RESORT AND OF A FEDERAL COURT

OF APPEALS. [Rule 17.1(b)]

The Illinois Supreme Court, held in the case of People v. Bayles, 82, Ill. 2d 128, 44 Ill. Dec. 880, 411 NE 2d 1346 (1980), that, absent exigent circumstances, none of which were present therein or in this case, the Fourth Amendment precludes the police from inventorying the contents of luggage found in an impounded motor vehicle.

The factual circumstances in People v. Bayles, and in this case are strikingly similar. Bayles, through a third party, suggested to the police that he had valuables in the suitcase, much as the police claim that Petitioner here did directly.

Even so, the Illinois Court citing its decision in People v. Hamilton, 74 Ill 2d 457 386 NE 2d 53, (1979), found that the care-

taking function could have been adequately fulfilled by sealing and storing the suitcase.

This Court denied the State's Petition for Writ of Certiorari to the Illinois Supreme Court on July 2, 1981, (No. 80-1008) thus allowing the decision to stand.

Petitioner respectfully submits, that, the Supreme Court of South Carolina, in allowing Petitioner's conviction to stand, has, in practical effect, defined the scope of an inventory search in a manner which conflicts with decisions of the highest Court of the State of Illinois, and of the Eighth Circuit Court of Appeals.

See also, State v. Houser, 95 Wash. 2d 143, 622 P. 2d 1218 (1980), wherein the Washington Supreme Court disapproved both the impoundment of the vehicle and the scope of the

inventory search, following the Defendant's arrest for a traffic offense and for obstruction of justice. The Court noted that South Dakota v. Opperman, "...extended only to the car's unlocked glove compartment." State v. Houser, at page 1226. This Court went on to say:

> "We therefore hold that an officer may not examine the locked trunk of an impounded vehicle in the course of an inventory search absent a manifest necessity for conducting such a search." 622 P. 2d 1226

Petitioner submits that no such "manifest necessity" exists in this case.

In United States v. Schleis, 582 F. 2d 1166, the en banc Eighth Circuit Court of Appeals, considered upon remand by this Court for consideration in light of Chadwick, a case involving the warrantless seizure of a briefcase from a known drug dealer. After

stating that the search and seizure could not be justified as protective while incident to an arrest where, as here, the briefcase was in the exclusive possession and control of the police, the Court, in interpreting South Dakota v. Opperman, observed:

> "To permit this search under the inventory search rationale would extend that rationale beyond the scope contemplated by the Court in Opperman. Luggage can be more readily reduced to possession and secured than an automobile. Moreover, the valid governmental interests served by an inventory search would have been satisfied here by inventorying the locked briefcase as a unit." 582 F. 2d 1173

The Court then held that the inventory search exception could not be relied upon to justify the warrantless investigatory search of Schleis' briefcase. 582 F. 2d 1173

Subsequent to United States v. Schleis, the Eighth Circuit, again passing upon an inventory search issue, decided in United

States v. Bloomfield, 594 F. 2d 1200 (1979), that a zipper closed, but unlocked, knapsack should have been treated as a unit rather than intruded into.

III

THE SUPREME COURT OF SOUTH CAROLINA HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT, BUT SHOULD BE, SETTLED BY THIS COURT. [Rule 171.(c)]

To the extent that the Supreme Court of South Carolina has allowed Petitioner's conviction to stand, it has extended the scope of an inventory search in a manner which violates Petitioner's Fourth Amendment protections, and which was not contemplated by this Court in South Dakota v. Opperman.

Petitioner respectfully submits that this case provides the Court with an opportunity to further define and limit the parameters

of an inventory search, and to thus provide state and federal courts with guidelines in this important area of the federal constitutional law.

CONCLUSION

For the reasons stated above, Petitioner respectfully submits that a Writ of Certiorari should issue to review the judgment of the Supreme Court of South Carolina, and thereupon reverse same.

Respectfully submitted,

COSTA M. PLEICONES
Counsel of Record for
Petitioner
1400 Laurel Street
Post Office Box 11408
Columbia, South Carolina 29211

JAMES C. HARRISON, JR.
1400 Laurel Street
Columbia, South Carolina 29201

Attorneys for Petitioner.

APPENDIX

APPENDIX A.

ORDER

THE STATE OF SOUTH CAROLINA

In The Supreme Court

The State,.....Respondent,

v.

Charles Ronnie Watson,.....Appellant.

Appeal From Newberry County

Francis B. Nicholson, Judge

Memorandum Opinion No. 81-MO-232

Filed August 19, 1981

AFFIRMED

Costa M. Pleicones, of Harrison and Pleicones, of Columbia, for appellant.

Attorney General Daniel R. McLeod and Assistant Attorney General Lindy P. Funk-

houser, both of Columbia; and Solicitor William T. Jones, of Greenwood, for Respondent.

PER CURIAM: The appellant was convicted of possession of methamphetamine with intent to distribute and sentenced to five (5) years' imprisonment.

After a careful consideration of the record and briefs, we are of the opinion that no error or law is present, and that a full written opinion would be without precedential value. Accordingly, the judgment of the lower court is affirmed under Rule 23 of the Rules of Practice of this Court.

s/ J. Woodrow Lewis C.J.

s/ Bruce Littlejohn A.J.

s/ J. B. Ness A.J.

s/ George T. Gregory, Jr. A.J.

s/ David W. Harwell A.J.

APPENDIX B.

THE SUPREME COURT OF SOUTH CAROLINA

Frances H. Smith
Clerk

P.O. Box 11330
Columbia, S.C. 29211

SEPTEMBER 16, 1981

Costa M. Pleicones, Esquire

Messrs. Harrison & Pleicones

P.O. Box 11408

Columbia, South Carolina 29211

Re: The State v. Charles Ronnie Watson

Dear Mr. Pleicones:

The Court has this day refused your Petition for Rehearing in the above case in the following order:

"Petition Denied.

s/ J. Woodrow Lewis C.J.

s/ Bruce Littlejohn A.J.

s/ J. B. Ness A.J.

s/ George T. Gregory, Jr. A.J.

s/ David W. Harwell A.J.

September 16, 1981."

Enclosed is Order of the Court staying the remittitur in this case for a period of sixty days. Please furnish us proof of filing with the United States Supreme Court.

Very truly yours,

s/ Frances H. Smith

CLERK

FHS/rl

Enclosure

cc: The Honorable Lindy P. Funkhouser

APPENDIX C.

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Docket No: 81-110

Memorandum Opinion No. 81-MO-232

APPEAL FROM NEWBERRY COUNTY

THE HONORABLE FRANCIS B. NICHOLSON, JUDGE

The State

Respondent

vs.

Charles Ronnie Watson

Appellant

PETITION FOR REHEARING

Costa M. Pleicones
Post Office Box 11408
Columbia, South Carolina 29211

ATTORNEY FOR APPELLANT

This Memorandum Opinion was filed on August 19, 1981. Pursuant to Supreme Court Rule 17, Section 2, Appellant hereby petitions this Court for a rehearing upon the grounds that the Court has overlooked or misapprehended certain principles of law and has overlooked or misapprehended certain points raised by the Appellant in his brief, as follows:

O N E

The Appellant posed the following argument, which was not mentioned or otherwise dealt with in the opinion of the Court:

THE TRIAL JUDGE COMMITTED PREJUDICIAL ERROR IN DENYING APPELLANT'S MOTION TO SUPPRESS AND TO EXCLUDE AS EVIDENCE, A QUANTITY OF METH-AMPHETAMINE SEIZED AS A RESULT OF A WARRANTLESS SEARCH, CONDUCTED UNDER THE GUISE OF AN INVENTORY.

T W O

The Appellant posed the following argument, which was not mentioned or otherwise dealt with in the opinion of the Court:

THE TRIAL JUDGE COMMITTED PREJUDICIAL ERROR IN INSTRUCTING THE JURY AS TO THE PUNISHMENT OF THE TWO OFFENSES THEREBY SUBMITTING FOR THE CONSIDERATION OF THE JURY IMPROPER AND CONFUSING ELEMENTS RELATING TO MATTERS OUTSIDE OF THE JURY'S PROVINCE.

T H R E E

The Appellant posed the following argument, which was not mentioned or otherwise dealt with in the opinion of the Court:

THE TRIAL JUDGE ERRED IN FAILING TO GRANT APPELLANT'S MOTIONS FOR A DIRECTED VERDICT OF NOT GUILTY, AND FOR JUDGMENT N.O.V., AS TO POSSESSION AND POSSESSION WITH INTENT TO DISTRIBUTE.

F O U R

The Appellant posed the following argument, which was not mentioned or otherwise dealt with in the opinion of the Court:

THE TRIAL JUDGE COMMITTED PREJUDICIAL ERROR IN FAILING TO CHARGE UPON THE LAW OF CIRCUMSTANTIAL EVIDENCE INASMUCH AS THE STATE RELIED WHOLLY THEREON.

Appellant is mindful that Supreme Court Rule 17, Section 2, does not permit argument upon the points which the Court is supposed to have overlooked or misapprehended. Mindful of that admonition, Appellant would merely point out that each question presented by the Appellant together with Argument thereunder, was posited to the Court not only in an adversarial context, but also in the belief that each question was substantial and meritorious, and in the case of Question One, would provide the Court with a vehicle for clarifying the

law relating to inventory searches.

As to Question Two, Appellant feels that the fact of the trial judge's instruction as to punishment, in, and of itself requires reversal.

Respectfully submitted,

s/ Costa M. Pleicones

COSTA M. PLEICONES
P.O. Box 11408
Columbia, S.C. 29211

Attorney for Appellant

Columbia, South Carolina

August 25, 1981

CERTIFICATE OF MERIT

I, S.R. Anderson, a member of the Bar of the State of South Carolina, and being counsel not concerned in the case of The State vs Charles Ronnie Watson, do hereby certify that I have reviewed the record and the briefs in this case, as well as this Petition for Rehearing, and in my judgment there is merit in the said Petition.

s/ S.R. Anderson
S.R. Anderson

Columbia, South Carolina
August 27, 1981

APPENDIX D.

EXCERPTS FROM TRANSCRIPT
BELOW IN PAGE ORDER

TR, Page 4, Lines 13-18

"MR. PLEICONES: At this time we do have a suppression motion because it is our understanding that the State intends to introduce into this trial as evidence approximately 455 grams of a substance that is purportedly methamphetamine. And our motion goes to the 4th Amendment issue that the amphetamine was seized in violation of the 4th Amendment rights of the Defendant in this case."

TR, Page 5, Lines 19-24

"PFC MILLS: Yes, sir. I was patrolling I-26, Newberry County, on the 24th approximately 3:00 A.M. in the morning, which was a Wednesday morning. I observed a Pontiac traveling eastbound on I-26. Upon observing the vehicle, I

stopped him on a routine traffic violation, at which time I placed him under arrest for operating a motor venicle while under the influence of alcohol."

TR, Page 11, Lines 24-25

"PFC MILLS: It is during--we inventory every vehicle that we take into the Complex whereas the driver has been incarcerated."

TR, Page 12, Lines 1-4

"PFC MILLS: ...the Highway Patrol itself, we do not have any forms; so, therefore, we either have a County Deputy or the City Police, whichever will be available, to assist us in doing this, and use their form."

TR, Page 12, Lines 12-16

"PFC MILLS: While in the breathalyzer room with Mr. Watson, he stated that he wanted to know what was going be done with

his vehicle. I explained to him that it would be impounded during the time he would be incarcerated. He said that he had some valuables in the vehicle and that he wanted it checked and locked."

TR, Page 14, Lines 16-18]

"SOLICITOR JONES: Now, Mr. Mills, I believe you said that you got Mr. Willie Johnson?

PFC MILLS: That's correct."

TR, Page 15, Lines 8-11

"SOLICITOR JONES: All right, sir. Now the area that the automobile is impounded is within a high fenced area just to the rear of the Complex, is it not?

PFC MILLS: That's correct, sir."

TR, Page 16, Lines 17-20

"PFC MILLS: Sgt. Johnson and myself went back behind the Complex into the compound

and started inventorying the vehicle. I inventoried--while I was inventorying the front part of the vehicle, the inside area of the vehicle, Sgt. Johnson was inventorying the trunk."

TR, Page 29, Lines 6-17

"MR. PLEICONES: And inventory. Well, did you provide Chief Campbell with any--or Captain Campbell--with any information concerning this event?

PFC MILLS: Well, I--I spoke with him.

MR. PLEICONES: You spoke with him?

PFC MILLS: Yes, sir. Later that morning after I returned from Columbia.

MR. PLEICONES: Let me more particularly ask you did--do you know who signed the warrant against the accused in this case?

PFC MILLS: I think Captain Campbell did. I couldn't say for sure.

MR. PLEICONES: All right, sir. Would

it be a fair question or fair statement to say that Captain Campbell signed the warrant at partially based upon testimony that you gave him more?

PFC MILLS: I would think so, yes, sir."

TR, Page 34, Lines 20-23

"MR. PLEICONES: OK, sir. So then you weren't present when--you didn't physcially observe Mr. Johnson taking all these items out of the trunk, did you?

PFC MILLS: No, sir."

TR, Page 49, Lines 10-17

"SOLICITOR JONES: And did you use 6 and 4 and 3 in that order to make an attempt to open it?

SERGEANT JOHNSON: Yes, sir.

SOLICITOR JONES: And did it open?

SERGEANT JOHNSON: Yes, sir.

SOLICITOR JONES: And when it opened what was inside of it?

SERGEANT JOHNSON: There was a brown paper bag, and inside of it was two plastic bags wrapped in a packing type material. It contained a powder."

TR, Page 56, Lines 5-6

"SERGEANT JOHNSON: I figured if it wasn't his, he couldn't grant me any permission. If it was, he was giving me permission."

TR, Page 59, Lines 18-20

"SERGEANT JOHNSON: He said, "That's not my brief case. I don't know what's in it. If you can open it, you should go ahead and open it and see what's in it." To that effect."

TR, Page 68, Line 10 - Page 69, Line 16

"MR. PLEICONES: All right, sir. Who is the affiant listed on the warrant?

MAGISTRATE ZOBEL: Capt. John Campbell, Newberry City Police Department.

MR. PLEICONES All right, sir. I direct your attention to the affidavit portion of the warrant. And if you could tell the Court, please, what substance is said to have been possessed?

MAGISTRATE ZOBEL: Amphetamine.

MR. PLEICONES: OK, sir. Now if you would, would you read that portion of the arrest warrant which dictates or details as to how this quantity of substance was found?

MAGISTRATE ZOBEL: Let's see. "...did have in possession quantity of amphetamine..." "this offense occurred at the Newberry County Detention Center, located on Louis Rich Drive in the City of Newberry, in Newberry County, South Carolina. Officers of the Newberry City Police Department discovered the aforementioned amphetamine (in powder form) in the motor vehicle of the accused during an inventory search of said vehicle at said Newberry County

Detention Center after the accused had been arrested and brought to said Detention Center on the charge of driving under the influence by Pfc. M.D. Mills of the South Carolina Highway Patrol."

MR. PLEICONES: OK, sir. Does that arrest warrant fairly and accurately detail the information presented to you by the affiant, John Campbell?

MAGISTRATE ZOBEL: That's correct.

MR. PLEICONES: All right, sir. And it says that it was found as a result of an inventory search?

MAGISTRATE ZOBEL: That is what we have here in the affidavit.

MR. PLEICONES: All right, sir. Is there anything on that warrant that indicates that there was consent to a search by the accused?

MAGISTRATE ZOBEL: No, sir.

MR. PLEICONES: All right, sir. Is there

anything to indicate any other means of finding this stuff out?

MAGISTRATE ZOBEL: No, sir."

TR, Page 77, Lines 12-14

"MR. PLEICONES: What did you tell them at this time, if anything, about your car?

MR. WATSON: Nothing. They were talking about the breathalyzer."

TR, Page 79, Lines 1-5

"MR. PLEICONES: OK. What, if anything, was asked you when this case was presented to you, if anything?

MR. WATSON: They asked me if it was mine.

MR. PLEICONES: What, if anything, did you respond?

MR. WATSON: I said, "I'm not sure."

TR, Page 81, Line 22 - Page 82, Line 21

"MR. PLEICONES: Were you afraid that something inside the case might be known to the police, if you opened it?

MR. WATSON: Yes, sir.

MR. PLEICONES: All right, sir. Did you have any idea what was in that case?

MR. WATSON: Yes, sir.

MR. PLEICONES: What was that idea?

MR. WATSON: Several days earlier I had put a brown paper bag in there for a friend. He told me to hold it.

MR. PLEICONES: Did it appear to be much similar to the brown paper bag you saw in Court today?

MR. WATSON: Yes, sir.

MR. PLEICONES: All right. When you placed that brown paper bag inside that case what did you expect relative to maintaining an interest and privacy in that case?

MR. WATSON: I expect it to be in my

private possession. The guy wanted me to hold it for him.

MR. PLEICONES: All right, sir.

MR. WATSON: That's all he said. He didn't say what it was, but---

MR. PLEICONES: You had an idea what it was, didn't you?

MR. WATSON: Genrally.

MR. PLEICONES: OK. Generally what idea did you have of what it was? Let's tell the Court.

MR. WATSON: Dope.

MR. PLEICONES: Dope?

MR. WATSON: Or contraband of some kind, dope probably."

TR, Page 110, Lines 12-13

"THE COURT: I cannot conclude that the automobile was abandoned as such on the theory of abandonment."

TR, Page 110, Line 22 - Page 111, Line 2

"THE COURT: I also find, however, as a fact that the Defendant did suggest that protection of valuables in the interior and in the trunk.

I further find as a fact that upon presentation of the brief case he did disclaim positive ownership to the extent that the officers were justified in proceeding."

TR, Page 111, Line 21

"THE COURT: I am required to deny the motion of suppression.'

TR, Page 139, Line 21 - Page 140, Line 9

"MR. PLEICONES: Your Honor, please, I would like to make a motion for a directed verdict at this time because under the standard that the Court must apply at this point I don't believe that there has been any evidence tending to show intent to distribute as count one, nor do I believe that there was any final proffer

of the evidence into evidence, or the amphetamine into evidence, subject to our previous objection to the hooking up of the relevancy. And we, therefore, move that the evidence be excluded and that a directed verdict be granted to the Defendant.

Plus our previous grounds under the suppression motion.

THE COURT: Thank you.

Taking them in inverse order, or course, the Court's ruling continues as the same as to the grounds for suppression."

TR, Page 140, Line 24

"THE COURT: So I'm required to deny your motion."

TR, Page, 143, Lines 16-18

"THE COURT: The Defendant rested and stated that it would offer no evidence and reiterated all prior motions. Rulings continue

the same."

TR, Page 156, Line 24 - Page 157, Line 9

"MR. PLEICONES: Yes, sir. I move at this time for a judgment notwithstanding the verdict. I very frankly pose to the Court that I don't think that the evidence as presented supports the verdict, and on the other grounds previously urged.

I'd ask the Court to exercise its prerogative as thirteenth defendant and find the--excuse me, thirteenth juror--and find the Defendant not guilty.

"THE COURT: Thank you. That motion is properly stated, and all preceding motions that were stated are being incorporated and considered. But I'm satisfied that the rulings were appropriate and correct, and I'm required to deny this motion."

Opposition

81-858

Office - Supreme Court, U.S.
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CLERK

IN THE

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OCTOBER TERM, 1980

No.

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versus

STATE OF SOUTH CAROLINA, Respondent

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DANIEL R. McLEOD
Attorney General

BRIAN P. GIBBES
Senior Assistant Attorney General

LINDY P. FUNKHOUSER
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211

ATTORNEYS FOR RESPONDENT.

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OPINION BELOW

The opinion of the South Carolina Supreme Court is reported in Memorandum Opinion No. 81-MO-232, filed August 19, 1981, as reproduced in Petitioner's Appendix A at pages 1-3.

JURISDICTION

Respondent does not question the Court's jurisdiction in this proceeding.

QUESTION PRESENTED

I.

Did Petitioner have a legitimate expectation of privacy in a briefcase found in the trunk of an impounded automobile during the course of an inventory requested by Petitioner when he disavowed any rights to the briefcase and its contents, directing law enforcement officers to open it and inventory its contents?

STATEMENT OF CASE

On September 24, 1980, Petitioner was lawfully arrested for the offense of driving under the influence, and his vehicle was lawfully impounded, pursuant to established procedures of the South Carolina Highway Patrol in the Law Enforcement Complex in Newberry, South Carolina. (Tr. p. 5, line 7-p. 11, line

11).[1] The automobile which Petitioner was driving was not registered in his name, but, rather, was registered in the name of Willie Gray Smith of Advance, North Carolina, who, according to Petitioner's testimony, was his father-in-law. (Tr. p. 23, line 21-p. 24, line 8). The inventory was not conducted until such time was it was determined, from the breathalyzer test results, that Petitioner would be charged with and incarcerated for driving under the influence. (Tr. p. 24, lines 16-25). The law enforcement officers had no cause to conclude that Petitioner had committed any other crime than driving under the influence at the time the inventory was performed. (Tr. p. 24, lines 12-15).

[1]Portions of the Transcript of Record not reproduced in the body of the Brief will be reproduced in Appendix 1 of this Brief.

The arresting officer, a Highway Patrolman, testified that the South Carolina Highway Patrol conducts an inventory of every vehicle which it impounds pursuant to incarceration of the driver. (Tr. p. 11, lines 24-25). Since the Highway Patrol does not have inventory forms, it is the common practice for the arresting officer to have a county deputy or city policeman to assist and provide the necessary forms. (Tr. p. 12, lines 1-4). The arresting officer testified that Petitioner, when notified that he would be incarcerated, stated he had valuables in the front of the car and in the trunk which he wanted checked and locked. (Tr. p. 12, lines 12-20). The list of items checked during the course of the inventory is shown in the Transcript at page 17, line 20-page 19, line 21. During the course of the inventory the officers found a locked briefcase which

the officer would have normally marked as a single unit without any further ado except for Appellant's desire to have his valuable checked and locked; for this reason the officers took the briefcase to Petitioner at the Law Enforcement Complex and asked him if there were any valuables inside. (Tr. p. 27, line 2-p. 29, line 2; p. 35, line 3-p. 37, line 8). The Newberry town policeman who assisted in the inventory presented the briefcase to Petitioner, asking if it contained anything of value. (Tr. p. 43, line 4-p. 48, line 2). The officer testified that Petitioner's response was as follows:

> he denied any knowledge of the briefcase, said it wasn't his, he didn't know what was in it. He was asked about the combination on the briefcase, if he knew the combination. He said know, it was not his, he didn't know anything about it, and if we could open it, we should open it and see what was in it. [emphasis supplied] (Tr. p. 48, lines 9-14).

When the officers succeeded in opening the briefcase, they discovered the quantity of methamphetamine which lead to Petitioner's conviction and this appeal. (Tr. p. 49, lines 15-22). The officer testified that Petitioner was aware of what he was doing since he had no problem in making a phone call from the complex, (Tr. p. 50, lines 18-21) and testified that his understanding from Petitioner's response to his inquiry was as follows:

> Like I say, if it wasn't his, he had no control of the case, he had no right to the case. If it was his, he was giving me permission to open it. (Tr. p. 56, lines 8-10).

Petitioner's testimony was somewhat different from that of the law enforcement officers.

Petitioner denied giving the officers permission to go into his automobile. (Tr. p. 79, lines 12-14). He also testified that, when the officers brought the case

to him, he "wasn't sure" it belonged to him. (Tr. p. 80, lines 21-24). His testimony on this matter is quite enlightening:

> Q. Did they ask you to open it?
> A. Yes, sir.
> Q. All right, sir. Did you open it?
> A. No, sir.
> Q. Why not?
> A. Because I wasn't exactly sure what was in it.
> Q. Were you sure it was your case?
> A. No.
>
> * * *
>
> Q. Were you afraid that something inside the case might be known to the police, if you opened it?
> A. Yes, sir.
> Q. All right, sir. Did you have any idea what was in that case?
> A. Yes, sir.
> Q. What was that idea?
> A. Several days earlier I had put a brown paper bag in there for a friend. He told me to hold it.
> Q. Did it appear to be much similar to the brown paper bag you saw in court today?
> A. Yes, sir.
>
> * * *
>
> Q. Okay. Generally what idea did you have of what it was? Let's tell the court.

A. Dope.
Q. Dope?
A. Or contraband of some kind, dope probably. (Tr. p. 81, lines 9-18; p. 81, line 22-p. 82, line 7-p. 82, lines 17-21).

Petitioner reiterated on cross-examination that he told the officer he "wasn't sure" that the briefcase was his. (Tr. p. 92, line 11-p. 93, line 2). He also admitted that he denied ownership of the briefcase when asked about it some hours later. (Tr. p. 97, lines 7-14).

The trial court found that Petitioner suggested the protection of valuables in the interior and in the trunk of his automobile and that he disclaimed ownership "to the extent that the officers were justified in proceeding." (Tr. p. 110, line 22-p. 111, line 2). The trial court also noted that "the cat and mouse activity, of course, is present at this point. (Tr. p. 111, lines 2-3). The trial court therefore denied Petitioner's

motion to suppress the methamphetamine found in the briefcase. (Tr. p. 111, lines 9-21).

ARGUMENT

Petitioner did not have a legitimate expectation of privacy in a briefcase found in the trunk of an impounded automobile during the course of an inventory requested by Petitioner when he disavowed any rights to the briefcase and its contents, directing law enforcement officers to open it and inventory its contents.

The first issue which must be addressed is whether Petitioner satisfied his burden of showing that he had standing to contest the seizure of the drugs in the briefcase. He cannot claim benefit of the "automatic" standing rule since this Court overruled it in United States v. Salvucci, et al., 448 U.S. 83, 65 L. Ed. 2d 619, 100 S. Ct. 2547 (1980). Also,

it is well established that legal possession or lawful ownership of items subjected to the allegedly invalid search do not necessarily confer standing upon the complaining party. United States v. Salvucci, et al., supra, 65 L. Ed. 2d at 627-628; Rawlings v. Kentucky, 448 U.S. 98, 65 L. Ed. 2d 633, 642, 100 S. Ct. 2556 (1980). Petitioner's testimony clearly established that he relinquished his expectation of privacy in the briefcase by disavowing any rights to it because of his apprehension concerning the legality of its contents. Rawlings v. Kentucky, supra; Rakas v. Illinois, 439 U.S. 128, 58 L. Ed. 2d 387, 99 S. Ct. 421 (1978). Nevertheless, if Petitioner has established his standing to contest the scope of this inventory, his claim is without merit.

It should be noted at the outset that this case is not controlled by Arkansas v. Sanders, 442 U.S. 753, 61 L. Ed. 2d 235,

99 S. Ct. 2586 (1979), or its progeny, Robbins v. California, ___ U.S. ___, 69 L. Ed. 2d 744, 101 S. Ct. ___ (1981), since these authorities merely establish that a search of personal luggage must be brought within other exceptions to the warrant requirement of the Fourth Amendment to be "reasonable". New York v. Belton, ___ U.S. ___, 69 L. Ed. 2d 768, 101 S. Ct. ___ (1981). The reasons for applying the inventory exception here are stated as follows:

> When vehicles are impounded, local police departments generally follow a routine practice of securing and inventorying the automobiles' contents. These procedures developed in response to three distinct needs: the protection of the owner's property while it remains in police custody [citation omitted]; the protection of the police against claims or disputes over lost or stolen property [citation omitted]; and the protection of the police from potential danger [citation omitted]. South Dakota v. Opperman, 428 U.S. 364, 369, 49 L. Ed. 2d 1000, 1005, 96 S. Ct. 3092 (1976). See also,

Cady v. Dombrowski, 413 U.S. 433, 37 L. Ed. 2d 76, 93 S. Ct. 2523 (1973).

In this case the trial court's finding of fact established that the law enforcement officers followed their routine caretaking procedures in response to an arrested driver's request that all valuables be checked and locked. The officers had no cause to believe the Petitioner was in possession of controlled substances, thereby conclusively establishing that the inventory was not "a pretext concealing an investigatory police motive." South Dakota v. Opperman, supra, 428 U.S. at 376, 49 L. Ed. 2d at 1009.

Another reason demonstrating the lack of merit to Petitioner's claim is his request (and, therefore, his consent) that an inventory be conducted of his automobile and his abandonment of any right to the briefcase when asked about it. Included within the exceptions to the

warrant requirement are abandonment of one's right to privacy, United States v. Salvucci, et al., supra, and consent, Coolidge v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971). The trial court's findings of fact are now binding upon Petitioner and he can point to no coercive or illegal conduct on the part of law enforcement officers to warrant reversal of South Carolina's determination on this issue.

CONCLUSION

For the foregoing reasons, Respondent submits that Petitioner's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

DANIEL R. McLEOD
Attorney General

BRIAN P. GIBBES
Senior Assistant Attorney General

LINDY P. FUNKHOUSER
Assistant Attorney General

ATTORNEYS FOR RESPONDENT.

APPENDIX

Q. Mr. Mills, you are a Patrolman stationed in the area of Newberry County, are you not, with the South Carolina Highway Department?

A. That's correct, sir.

Q. On the early morning hours of September 24, 1980, were you on duty?

A. Yes, sir, I was.

Q. Did you have an occasion to see the Defendant in this case, Charles Ronnie Watson?

A. Yes, sir.

Q. Would you please go back to the initiation of the circumstance that led to your seeing him as you were on duty in this County?

A. Yes, sir. I was patrolling I-26, Newberry County, on the 24th approximately 3:00 a.m. in the morning, which was a Wednesday morning. I observed a Pontiac traveling eastbound on I-26. Upon observing the vehicle, I stopped him on a routine traffic violation, at which time I placed him under arrest for operating a motor vehicle while under the influence of alcohol.

Q. What was it that attracted your attention to the car in its operation that caused you to bring the car to a halt, sir?

A. The drive, Mr. Watson, was driving considerably erratic, and the back--going

back and forth, going into the emergency lane and back into the passing lane, this type driving.

Q. Going into the emergency lane and back?

A. And then back across into the passing lane in an erratic manner.

Q. I see. And over what period, or at least over what distance, could you ascertain that you observed this?

A. I started observing Mr. Watson approximately a mile west of 34 Interchange, got him stopped right at 219 Interchange, which is approximately two and a half, three miles.

Q. Was this weaving or erratic driving, as you designate it, a continuous thing?

A. Yes, sir, it was.

Q. Did it happen continually?

A. Yes, sir.

Q. All right. Do you see Mr. Watson in Court this morning?

A. Yes, sir, I do.

Q. Where is he?

A. Sitting right beside--at the table here on the end. (Pointed.)

Q. All right. And I ask you this. When you brought the automobile to a stop did you employ your blinking light, your blue light?

A. Yes, sir, I did.

Q. Was it necessary to employ any other device other than that to bring it to a stop?

A. I had to hit the siren one time.

Q. All right, sir. And when the car was brought to a stop was anyone else in the vehicle besides the Defendant, Mr. Watson?

A. No, sir, it was not.

Q. He was alone?

A. That's correct, sir.

Q. All right, sir. And did you stay in or get out of your car?

A. I got out of my vehicle.

Q. And did you stay at your vehicle or did you go near the other vehicle?

A. No, sir, I went up to the door of his vehicle, asked him for his license and registration card.

Q. All right. And what did you observe as, I assume, he prepared to give to you those things?

A. After asking for his license and registration, he was fumbling through his wallate looking for them. After he found the, he give them to me. I asked him to step out the car and come to the rear of the vehicle.

Q. And when--were you there observing him as hi got out of his car and did, in fact, got to the rear of the vehicle?

A. Yes, sir, I was.

Q. Did he do that in a steady manner? Or----

A. No, sir, he was swaying back and forth. And at this time I opened the door for him to get out of the vehicle, when he stood up, I did smell a odor of alcohol on his breath at the time.

Q. Was it light or stong? Or----

A. It was--it was a strong odor at the time.

Q. All right, sir. Now did you at any given poing, at this time or even later, make a mental determination that in your opinion Mr. Watson was under the influence of intoxicants as contemplated by the law regulating the operation of a motor vehicle in this State?

A. After getting him to the rear of the vehicle and talking with him, at that time I did determine in my opinion that he was under the influence of alcohol.

Q. Did you place him under arrest for that offense?

A. Yes, sir, I did at that time.

Q. Did you tell him what you were arresting him for?

A. Yes, sir, I did.

Q. Did you out there make an offer to bring him for a breathalyzer test?

A. Yes, sir.

Q. And did you, in fact, bring him?

A. Yes, sir, I did.

Q. What kind of tag did this car that he was operating have on it? Was it a South Carolina license tag?

A. No, sir, it was a North Carolina tag, sir.

Q. An out-of-state tag?

A. That's correct, sir.

Q. Was Mr. Watson from this community, County or area, to your knowledge.

A. No, sir.

Q. Were you able to ascertain where he was from in the course of your examination on the scene?

A. Yes, sir.

Q. And where was that?

A. On his driver's license that he presented he resided at Route 1, Box 356, in Rural Hall, North Carolina.

Q. In where?

A. Rural Hall.

Q. Rural Hall, North Carolina?

A. That's correct, sor.

Q. Do you know where up in the State Rural Hall is? Is it----

A. Later one, after I talked with him and all, he said it was somewhat a suburb of Winston-Salem.

Q. In the norther portion, up near the Tri-City area?

A. I guess so. I'm not familiar with that party, sir.

Q. I see. All right, sir. Then I ask you this. As you proceeded to execute your arrest of him for operating a motor vehicle while under the influence of intoxicants, what did you do with regard to his motor vehicle out there on the public highway?

A. After placing Mr. Watson under arrest for driving under the influence, patting him down, and palced him in my car, I advised him that we would be responsible for the vehicle and asked him if he knew of any tow service locally that could come and get it. And he told me he didn't know anybody. So, therefore, I went through our radio communications and they sent the next on the list.

Q. He did not know anyone to take care of it. He just--did he indicate to you that he wanted to do anything else with it?

A. He said he didn't want to leave it on the side of the road.

Q. That he didn't want to leave it on the side of the road.

A. That's correct.

Q. And you asked him if he knew of any tow service or anybody to come to get it?

A. That's correct.

Q. And he told you he did not?

A. That's right, sir.

Q. So then you went through your-do you have a normal system or method where there---

A. Yes, sir.

Q. --is rotation of tow service in this County?

A. Yes, sir, we do. When they don't have a preference we go through our communications. They in turn go through the Complex here at Newberry. The Complex keeps a list of the wrecker services and we use it on a rotation basis.

Q. What manner or method did you carry out this? Did you secure the car there at the scene, and after notifying this wrecker service, or did you wait for it arriving, or just how did you go about bringing in the Defendant, Mr. Watson, to the Complex and also having his car brought in to the Complex?

A. At the time Mr. Watson stepped out of his car, and the vehicle was running, and he locked the door; so, therefore, he locked the keys in the car and it was sitting there funning. So we waited for the wrecker service to get there. We had to get the keys out of the vehicle. Once he--once we did get the keys out of the vehicle and get it cut off, I proceeded to the Complex with Mr. Watson. (Tr. p. 5, line 7-p. 11, line 11).

* * *

A. The owner of the vehicle was a Willie Gray Smith from Advance, North Carolina, was what came back on the registration certificate..

Q. All right, sir. Did the Defendant indicate to you what, if any, relationship he might bear to Willie Gray Smith?

A. He stated that that was, I believe, it was his father-in-law or something of this nature.

Q. You have no reason to suspect that was other than the case, did you?

A. In what regards?

Q. Other than--anything other than that Mr. Smith was the Defendant's father-in-law?

A. No, sir. I ran a check anyway and it came back as no stolen vehicle---- (Tr. p. 23, line 21-p. 24, line 8).

* * *

Q. All right, sir. So at this point when was it that you determined that an inventory would be conducted?

A. Well, the inventory was going be conducted once it was determined that he would be incarcerated for any period of time.

Q. OK, sir. And when would that determination have been made?

A. That determination was made after he agreed to take the breathalyzer and he took the breathalyzer, and the results.

Q. The results of the breathalyzer were over the amount indicated for the presumption to arise?

A. That's correct. (Tr. p. 24, lines 16-25).

* * *

Q. So you had then no cause to conclude that the Defendant had committed any other crime other than, of course, driving under the influence?

A. That's all. (Tr. p. 24, lines 12-15).

* * *

A. It is during--we inventory every vehicle that we take into the Complex whereas the driver has been incarcerated. However, ... (Tr. p. 11, lines 24-25).

the Highway Patrol itself, we do not have any forms; so, therefore, we either have a County Deputy of the City Police, whichever will be available, to assist us in doing this, and use their form. (Tr. p. 12, lines 1-4).

* * *

A. While in the breathalyzer room with Mr. Watson, he stated that he wanted to know what was going be done with his vehicle. I explained to him that it would be impounded during the time he would be incarcerated. He said that he had some valuables in the vehicle and that he wanted it checked and locked.

Q. So that--did he indicated to you where those valuables were?

A. He said he had some in the front of the car and in the trunk.

Q. In both places?

A. Yes, sir. (Tr. p. 12, lines 12-20).

* * *

Q. I'll ask you, Officer, if what you found consisted of the following: One can of mace in the console, one tote bag with clothing on back seat, after-shave kit on back seat, pair of pants and hanger behind driver's seat, shirt on hanger on rear seat, black plastic bag containing blanket in trunk?

MR. PLEICONES: Your Honor please, this I would say, even though we have no Jury present, amounts to testimony, and I would say the best evidence is what the officer recalls being there.

SOLICITOR JONES: He can read it off himself, Your Honor.

THE COURT: Well----

Q. Start with pieces of pipe.

THE COURT: --I--I can read the document. We can just handle it as a document. He could verify it.

SOLICITOR JONES: Your Honor, I would----

MR. PLEICONES: I simply want it in the record that I don't agree to this as evidence

of the articles, only that that is the inventory that Officer Mills made out, as long as that burden is carried.

THE COURT: Fine.

MR. PLEICONES: All right.

THE COURT: I assume at some point he will either affirm or disaffirm.

MR. PLEICONES: All right, sir.

THE COURT: Of his own recollection.

MR. PLEICONES: Thank you, Your Honor.

THE COURT: I--I don't know.

Q. These articles that are listed on pages 1 and 2, would you tell us--I thought I asked a minute ago--if those are the articles that you did, in fact, find there, you and Officer Johnson, in the car?

A. Yes, sir, they are.

Q. All right.

THE COURT: You may have--unless there's--do you want it marked for identification or leave it unmarked at the present.

SOLICIOTR JONES: Yes, sir.

THE COURT: You may pass it to the Court after you've used it.

SOLICITOR JONES: May I have a staple?

(Solicitor Jones got a staple gun from the Clerk of Court and stapled two sheets together.)

(Inventory sheets marked for identification as State's Exhibit 1 for Identification.)

Q. I go on and ask if you also found pieces of pipe in trunk, coats in trunk, a spare tire, jack and accessories, one .44 Magnum Marlin lever action rifle, serial number, one round in chamber and one in magazine, pint Vodka in brown paper sack in trunk, brown brief case containing one brown paper bag containing two clear plastic bags, wrapped in brown packing material, said bags containing powder material?

A. Yes, sir. (Tr. p. 17, line 20-p. 19, line 21).

* * *

Q. OK. On the evening in question, do you recall noticing anything unusual about this case?

A. I don't quite understand what you----

Q. I mean does it appear----

A. About the brief case itself?

Q. Yes, sir.

A. At the time nothing unusual appeared about it, no, sir.

Q. It appears now in pretty much the same form it appeared then?

A. Yes, sir.

Q. Except that it was locked them?

A. That's right, sir.

Q. OK, sir. You were not present then when, I believe, it was Sgt. Johnson presented the case to Mr. Watson, is that correct?

A. No, sir, I was not present.

Q. All right. Were you in visual contact? Could you see the presentation of the case?

A. No, sir, I could not.

Q. All right, sir. You were back at the vehicle?

A. That's correct, sir.

Q. And it's your testimony that the Defendant, Mr. Watson, wanted you to-- or told you that he had valuables that he wanted preserved.

A. That's correct.

Q. And again, if I could, I'm not really clear on this, where did he tell you these things were located?

A. He stated that he had valuables in the car and trunk, he wanted it checked and locked up.

Q. Did he way what kind of valuables they were?

A. No, sir, he never did specify.

Q. All right, sir. You've had occasion to arrest people before for DUI on the Interstate, haven't you?

A. Yes, sir.

Q. OK. And you've had occation to have their cars brought into the Law Enforcement Complex here in Newberry?

A. That's correct.

Q. All right, sir. So then you've had occasion, since it's routine, to inventory vehicles in the past, have you?

A. That's correct.

Q. All right, sir. What is your ordinary policy with respect to personal luggage or luggage that you find in a vehicle?

A. Inside the vehicle itself?

Q. Yes, sir.

A. I normally just tag it as being one single unit.

Q. OK-sir. And what about inside the trunk? Do you normally go inside a locked trunk?

SOLICITOR JONES: I can't see. I can't see the witness.

A. No, sir, not unless they----

SOLICITOR JONES: You're blocking, blocking my view.

A. Not unless they state that they have valuables and we go into vehicle itself; and we don't find any valuables there, then I would have gone into the trunk to see if I could locate the valuables. But normally, no, sir, I would not have. (Tr. p. 27, line 2-p. 29, line 2).

* * *

Q. OK, sir. Now you weren't present when Mr. Johnson physically presented the case to Mr. Watson, you say, right?

A. That's correct.

Q. OK, sir. Were you present when it was opened?

A. Yes, sir.

Q. OK, sir. When relative, if we can get it down--I would assume that Mr. Johnson, after he found the articles in the trunk, walked into the Detention Center, is that correct?

A. He took the attache' case and went in, yes, sir.

Q. Is the attache' case the only thing he took into the Detention Center?

A. Yes, sir.

Q. All right, sir. Just it?

A. That's correct.

Q. Were there any other containers in the vehicle?

A. No, sir, nothing besides a tote bag.

Q. OK, sir. Did Mr. Johnson indicate to you any reason why he was taking the attache' case into the Detention Center?

A. He said that it was locked. He was going to go see, you know, what it was.

Q. He was toing to open it?

A. No, sir, he was going in to see Mr. Watson to see what it was. He didn't say anything about opening it at the time.

Q. Well, you mean it--he could see what it was, couldn't he? It was an attache' case, isn't it?

A. Yes, sir.

Q. All right, sir. So did he indicate any reason to you why he would want to see anything further about it?

A. We were looking for valuables which Mr. Watson had said he had.

Q. I see. OK. And the fact is that it came--that Mr.--you didn't see, physically see him take it from the trunk, but the fact is that it was--you didn't see him take it from anywhere else, did you?

A. No, sir.

Q. So it came from the trunk of the vehicle?

A. To the best of my knowledge, yes, sir, it did.

Q. OK, sir. And you were possessed of that knowledge, you knew that, didn't you?

A. That it came from the trunk?

Q. Yes, sir.

A. Yes, sir.

Q. Mr. Johnson knew it, didn't he?

A. Yes, sir.

Q. OK, sir. So can you tell me what basis could be--what reason could be served for opening it?

A. For the purpose of locating valuables that Mr. Watson had stated he had earlier.

Q. OK. If it remained locked, and you so stated that your inventory, would not that adequately protect it?

A. Not under the circumstances, I wouldn't think so. He said----

Q. What circumstances are unusual?

A. When somebody tells me they got valuables I want to know exactly what valuables they have.

Q. Well, you----

A. That's my opinion. (Tr. p. 35, line 3-p. 37, line 8).

* * *

DIRECT EXAMINATION BY SOLICITOR JONES:

Q. Mr. Johnson, are you employed by the City or Twon of Newberry Police Department, sir?

A. Yes, sir, I am.

Q. How long have you been in law enforcement?

A. Approximately fifteen and a half years.

Q. What is your rank or rating?

A. Sergeant.

Q. Do you have an independent recollection, Sergeant, of the early morning hours of September 24, 1980?

A. Yes, sir.

Q. Did you see the Defendant, Charles Ronnie Watson, on that occasion and on that morning?

A. Yes, sir.

Q. Do you recognize him as being in Court today?

A. Yes, sir.

Q. Where is he?

A. At the defense table. (Pointed.)

Q. I ask you if you--where it was that you saw him?

A. In the jail area at the Complex.

Q. In the jail area?

A. Yes, sir.

Q. All right. Did you see the Patrolman, M. D. Mills?

A. Yes, sir.

Q. Where did you first make contact with Mills or with the Defendant? Just how did you come on the scene. Who--did you con--did you go to them or did they come to you or just what?

A. No, sir, I was at the booking area. Mr. Mills and Mr. Watson and Corporal Attaway came out of the breathalyzer room, came into the booking area.

Q. This was after he had already been given the test?

A. Yes, sir.

Q. And did you go to anyone of those three or did some one of those three come to you?

A. Mr. Mills came to me.

Q. And what did he come to you for, if for anything?

A. Mr. Mills asked if I would assist him in inventorying a vehicle.

Q. And did you agree?

A. Yes, sir.

Q. Did you proceed to do it?

A. Yes, sir.

Q. Where was the vehicle?

A. The vehicle was parked at the back of the Complex. It was in the chain link fence area.

Q. When you got to the vehicle had you discussed with Mr. Mills the fact that the Defendant had indicated that he had valuables in the car?

A. As they came out of the breathalyzer room, as I recall, the Defendant wanted to make a telephone call.

Q. Was he allowed?

A. Yes, sir. Mr. Mills----

Q. Do you have any idea to whom he made it, to whom he made the call?

A. I believe, my recollection he said he wanted to call his wife in North Carolina.

Q. I see. All right, go ahead.

A. Mr. Mills told him to go ahead and make his call at the time, that he was going ahead and inventory the vehicle. And the Defendant said, "OK." And at that time Mr. Mills asked me if I would help him inventory the vehicle. And I said that I would. And we obtained one of our inventory forms and proceeded to inventory the vehicle, at which time Mr. Mills did make mention that the Defendant had mentioned some valuables that he may have had in the car.

Q. I see. When you got to the car did he make mention to you, Mr. Mills, of where the Defendant indicated his valuables might be in the car?

A. He mentioned the interior of the car and the trunk also, I believe.

Q. Both places?

A. Yes, sir.

Q. All right. And tell us how you went about making this inventory jointly with Mr. Mills, if you will, sir.

A. All right, sir. We inventoried the interior of the car first. As I can recall, Mr. Mills would call out the items and I'd

make a note of it. And then we inventoried the trunk of the vehicle.

Q. I see.

A. That was the last.

Q. All right. And I hand to you for identification purposes State Exhibit 1 and ask you to look it over. (Handed to the witness.) Is that the inventory sheet that was used? There are two sheets there. You had to add one on the back apparently.

A. Yes, sir.

Q. And is your signature on there?

A. Yes, sir.

Q. Along with Officer Mills'?

A. Yes, sir.

Q. The two of you jointly made that inventory together?

A. Yes, sir.

Q. Are those forms that you have in your Department that are normally used for inventories?

A. Yes, sir.

Q. All right, sir. And was this brief case found in the vehicle?

A. Yes, sir.

Q. And where was it found?

A. In the trunk.

Q. And when it was found was it locked or unlocked?

A. It was locked.

Q. Now at the conclusion of the inventory was a decision made concerning this brief case, whether to leave it there or to go inside with it?

A. Yes, sir, we--Corporal Attaway came outside and when we found the brief case and it was locked Corporal Attaway and myself went inside and asked Mr. Watson.

Q. All right. Before you go into that, did you find anything else of value? You spoke of this, staying that he had valuables in the car, both up in the front part and the trunk. Was anything else of value besides this brief case, if it did have anything in value in it, out there?

A. There was a rifle in the trunk of the vehicle, as I recall.

Q. Did you know what of value might have been in the brief case?

A. No, sir.

Q. Your purpose for taking it inside was to ascertain what, sir?

A. If there was any value--anything of value in the brief case, it would have been left with his belongings inside with the jailer, rather than in the vehicle itself.

Q. I see. And did you go with the brief case to the Defendant?

A. Yes, sir.

Q. When you went with the brief case to the Defendant tell us any conversation or action that took place by and between you and the Defendant and anyone else?

A. All right, sir. He was asked if the brief case contained anything of value. And at this time he denied any knowledge of the brief case, said it was not his, he didn't know what was in it. (Tr. p. 43, line 4-p. 48, line 3).

* * *

Q. And when it opened what was inside of it?

A. There was a brown paper bag, and inside of it was two plastic bags wrapped in a packing type material. It contained a powder.

Q. And did you go inside and make any tentative determination of the identity of the substance on your own to the best of your ability?

A. Yes, sir, we--we attempted to with the drug kit that we had there at the Complex. It appeared that we got a reaction it it. (Tr. p. 49, lines 15-22).

* * *

A. It appeared to me that he knew well what he was doing. He had no problem making the phone call. The phone call went right through without any problem at all. In talking with him, you know, I saw no problem with him. (Tr. p. 50, lines 18-21).

* * *

Q. OK. Had you given anyone any scope of authority or permission to go into your car?

A. No, sir. (Tr. p. 79, lines 12-14).

* * *

Q. All right, sir. Can you be sure that that is the case there that was presented to you; the one in the Court today is the one that was presented to you on that evening?

A. I'm sure now, but I wasn't sure then. (Tr. p. 80, lines 21-24).

* * *

Q. You say when they came to you with this bag right here you told them what?

A. That I didn't--I wasn't sure.

Q. You wasn't sure?

A. Yes, sir.

Q. Well, when they asked you to open it why didn't you make sure?

A. Because I was afraid of what was in it.

Q. You were afraid of what was in it?

A. Yeah.

Q. I see.

A. I sure wasn't going to help them out. That's my private property, according to y'all.

Q. So you told them you wasn't--you wasn't--wasn't sure it was yours? Is that what you said?

A. Yeah, because it was just a ordinary looking case. I mean I play chess and I go to chess tournaments. I've had several cases, brown cases, black cases. (Tr. p. 92, line 11-p. 93, line 2).

* * *

Q. But you admit denying it was yours on the second day? On the same day, later on the same day, up in the daytime?

A. A case similar to the one that they showed me.

THE COURT: Whatever case they showed you.

Q. Whatever case they showed you.

THE COURT: Give us a yes or no, and then I'll let you explain, if you want to.

A. I--I--I denied it then. (Tr. p. 97, lines 7-14).

* * *

I also find, however, as a fact that the Defendant did suggest that protection of valuables in the interior and in the trunk.

I further find as a fact that upon presentation of the brief case he did disclaim positive ownership to the extent that the officers were justified in proceeding.... (Tr. p. 110, line 22-p. 111, line 2).

The case and mouse activity, of course, is present at this point. (Tr. p. 111, lines 2-3).

* * *

I have to conclude that under these unusual facts it is not the kind of decision that the Court sits down with and says, "I'm sure I'll never get reversed." It's close and I'm sure will be reviewed very thoroughly. It should be. I would invite review. But I conclude under these unusual circumstances and the credible body of evidence presented, I find that the State's presentation of fact as to the suggestion of protection of valuables, and the declination of ownership, that these are credible and that these facts in this unusual circumstance override the basic premise that the locked trunk and locked container are ordinarily immune from any search, and should be properly so immune.

I am required to deny the motion of suppression. (Tr. p. 111, lines 9-21).